



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 330-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 February 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

On 1 April 2015, you were administratively separated from the Navy's Delayed Entry Program with an uncharacterized entry level separation due to a "moral disqualification." However, you ultimately enlisted in the U.S. Navy and entered active duty, on 14 October 2015, at age thirty (30). Your pre-enlistment physical examination, on 17 February 2015, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 3 March 2016, you received non-judicial punishment (NJP) for failing to obey a lawful general order or regulation. You did not appeal your NJP.

Following your NJP, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. Your command processed

your separation using “notification procedures,” which meant the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). On 16 March 2016, the Separation Authority approved and directed your discharge for misconduct due to the commission of a serious offense with a GEN characterization of service. Ultimately, after only serving for less than five and one-half months on active duty, you were discharged from the Navy for misconduct with a GEN characterization of service and assigned an RE-4 reentry code on 25 March 2016.

On 29 October 2020, the Naval Discharge Review Board (NDRB) denied your initial application for relief. The NDRB determined your discharge was proper as issued and no change was warranted.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for changes to your record and contentions that: (a) you were never afforded the opportunity to correct your mistake by way of a retention warning or other rehabilitative measures, and (b) in failing to provide this alternative to you so you could continue meaningful service to your country, the Navy committed an injustice. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, change in reentry code, or other conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board noted that, although one’s service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under GEN or under Other Than Honorable conditions (OTH) is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board determined that you did not submit sufficient evidence to rebut the presumption of regularity in the conduct of governmental affairs. The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge or reentry code to be automatically upgraded after a specified number of months or years. Finally, the Board determined that your command had the discretion to administratively process you for commission of a serious offense based on your misconduct and was not required to counsel you

or retain you on active duty. After considering the evidence of your NJP, the Board found no abuse of discretion by the Navy. As a result, the Board determined that there was no impropriety or inequity in your discharge characterization, reentry code, and narrative reason for separation, and the Board concluded that your misconduct clearly merited your receipt of a GEN and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. While the Board carefully considered the arguments you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

2/12/2023

